



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/575,633	05/22/2000	William B. Johnson		1491
7590	07/14/2005		EXAMINER	
JAMES V. HARMON Pillsbury CENTER, SUITE 2000 220 SOUTH Sixth Street Minneapolis, MN 55402			LEVY, NEIL S	
		ART UNIT	PAPER NUMBER	1615

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/575,633	JOHNSON, WILLIAM B.	
	<b>Examiner</b>	<b>Art Unit</b>	
	NEIL LEVY	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 13 April 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 27,28,30,31 and 33-35 is/are pending in the application.  
4a) Of the above claim(s) 28 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 27,30,31 and 33-35 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) 27,28,30,31,33-35 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 28 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/13/05.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 34, 35, 27, 30, 31 and 33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 34 now recites exclusion of non-toxic components, and these are discussed and disclosed in the specification. However, general inclusions of thickener, surfactants, cations of copper, zinc, borate are toxicants, and thus the claims should be limited to those components and compounds that applicant deems to meet this terminology.

The factors to be considered in determining whether a disclosure meets the enablement requirement of 35 U.S.C. 112, first paragraph, have been described in *In re Wands*, 8 USPQ2d 1400 (Fed. Cir. 1988). Among these factor are: (1) the nature of the invention; (2) the state of the prior art; (3) the relative skill of those in the art; (4) the

predictability or unpredictability of the art; (5) the breadth of the claims; (6) the amount of direction or guidance presented; (7) the presence or absence of working examples; and (8) the quantity of experimentation necessary. When the above factors are weighed, it is the examiner's position that instant disclosure fails to meet the enablement requirement for the following reasons:

- (1) The nature of the invention: known compounds and formulations, but not clearly meeting the non-toxic now claimed criteria.
- (2) The state of the prior art; known compounds/formulations, with some known to be toxic, others not identified as either safe, non-toxic, or toxic and requiring insect and animal toxicity, testing and requiring phytotoxicity testing for crops of concern.
- (3) The relative skill of those in the art  
The relative skill of those in the art is high-requiring multiple testing of multiple plant, animal, insect species.
- (4) The predictability or unpredictability of the art  
The unpredictability of the art is very high; dependent on test subject, and agents, some are toxic others not.
- (5) The breadth of the claims –  
The claims are broad, as polymer, and specific combination and ratio are not claimed.

(8) The quantity of experimentation necessary: extensive testing would be required.

For example, sodium lauryl sulfate is recognized to be toxic, as is citronella, formaldehyde, candels oil, hydrated lime quaternary ammonia compounds, borates, alcohol, copper, zinc –see Dreisbach.

Claims 34, 35, 27, 30, 31, 33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. “Nervous system inhibitor” is not evident to examiner anywhere in the specification. The rejection over art may be reinstated and made final when the new matter is removed.

Applicant's arguments filed 4/13/05 have been fully considered but they are not persuasive. Applicants arguments are to aboud being a newrotopin, mueninghoff not being thick and Guice not combinable-we see aboud as presumptive ineffects, as is the instant unknown mode of operation (p.4, bottom) while Guice provides exemplification of available means of delivery, thus, not a basis for patentability of the instant delivery means and mueninghoff at worst questionable. Applicant hasn't shown failure, to thicken.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/tgd  
July 11, 2005



NEIL S. LEVY  
PRIMARY EXAMINER